The

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BAR ASSOCIATION MONTHLY MEETING

Thursday, May 16, 1929

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The BAR ASSOCIATION BULLETIN

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LOS ANGELES BAR ASSOCIATION

(City and County—Organized 1888)

Secretary's Office: 687 I. W. Hellman Bldg., Los Angeles. Phone VA-5701

Domestic Relations (and Revelations)*

By HONORABLE B. REY SCHAUER, *Judge of the Superior Court, Los Angeles County, Domestic Relations Department.*

Divorce is not a new problem. In Deuteronomy, chapter 24, verses 1 and 2, it is provided:

"1. When a man hath taken a wife, and married her, and it come to pass that she find no favor in his eyes, * * *: then let him write her a bill of divorcement, and give it in her hand, and send her out of his house.

"2. And when she is departed out of his house, she may go and be another man's wife."

If that were still the law it would save me a lot of grief; and, on the other hand, if a lot of people from Hollywood and Iowa and other centers would realize that it is not still the law, that also would save me a lot of work.

I might also mention that Rabbi Moses, in writing the book of Deuteronomy, further displayed his perspicacity in verse 5:

"When a man hath taken a new wife, he shall not go out to war, neither shall he be charged with any business."

I never fully appreciated Moses until I was assigned to the Domestic Relations Department. How he ever acquired so comprehensive a knowledge of the subject without having served in such a department I do not know. Perhaps it was his background: Pharoah's daughter found him in the bulrushes — at least that was the story she told her parents—and he was taken in and raised in an environment not far different from some conditions that obtain today.

While, as I have demonstrated, the divorce problem is not new, it has ramifications which are new and its recent growth is remarkable. In 1918, in Los Angeles County, 1907 interlocutory decrees were entered; in 1928, 10,617 divorce cases were filed. Ten years ago the Domestic Relations Department was recognized as a "man-killer" — in 1928 it was recognized that some steps would have to be taken to lighten the work for the judge and to make the work of greater social value. In the latter regard the court as a whole was seriously impressed with the statistics from its criminal departments and the reports of various crime investigation and social agencies showing that the majority of our criminals are young people coming from broken homes. With these considerations in mind a committee of judges, appointed by then Presiding Judge Hahn, and consisting of Judges Tappaan, Montgomery

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*EDITOR'S NOTE: *The following letter to the editor of the* BULLETIN *from Honorable Arthur Keetch, Presiding Judge, summarizes the excellent work in the Domestic Relations Court being done by Judge Schauer, the writer of this article:*

"Judge B. Rey Schauer upon my urgent solicitation, after the suggestion had been made to me by several of my colleagues, consented a few months ago to preside over the Domestic Relations Court. This department is one of the least desirable from the point of view of the judge in our entire court, due to the tremendous volume of business handled and the personal grief which is continually poured into the ears of the judge.

"At the time Judge Schauer started to preside in this department there was much confusion due to the fact that the court had not been in charge of one judge continuously for any appreciable length of time. In preparing and promulgating the Domestic Relations forms and questionnaires Judge Schauer has introduced a new and novel feature into the Domestic Relations work, which is fully supported by the decisions of our Supreme Court, and has through this excellent innovation and other changes effected a vast saving of time for counsel as well as the court.

"I feel that I am expressing the consensus of opinion of the bench and bar when I say that Judge Schauer's questionnaires and forms have resulted in the Domestic Relations Court's making a vast stride toward the goal where legal precedent and business-like efficiency unite in expediting economic justice."

(Signed) ARTHUR KEETCH,
Presiding Judge.

and Bishop went to work. Their report came in at the close of the year and has been acted upon by our present Presiding Judge, Arthur Keetch. Needless to say, the department is not a popular one among the judges. One of the greatest inducements for a lawyer to engage in judicial work is the typical courtroom atmosphere—the opportunity to pursue the profession we have all chosen as a life work, amid orderly, dignified, elevated surroundings. That atmosphere is largely absent in the Domestic Relations Department. We have there problems that are acute rather than profound; of more social than legal significance; more sordid and pitiful than criminal. I do not believe that I have ever met a lawyer who would deliberately choose divorce litigation—particularly that type of divorce litigation which involves application for temporary alimony, attorney's fees, and custody and support of children—as his sole type of practice. In view of these facts it was for some time a rule that no judge should be required to stay in that department for more than three months — and oftentimes it was occupied from day to day by different outside judges. One recommendation of the committee was that assignments to that department be permanent, or for not less than one year, and that it be the duty of the judge so assigned to make a special study of the social as well as administrative or mechanical problems with a view to building up increased efficiency for society, the bar and the court. Judge Keetch picked on me. While I accepted the assignment somewhat against my will and with some misgivings, the co-operation which has been extended by other judges, the members of the bar, and various public and private social workers, has been so splendid that I am now glad that it came. The improvements we have made, if they are improvements, are to be credited to Judges Keetch, Tappaan, McComb, Gates, Municipal Judge Rosenkranz and others; for they have contributed largely in ideas and suggestions. The objectionable features are to be taken up with me, for I have the responsibility endeavoring to put those ideas in operation.

The first problem that confronted us was a very practical one—that of getting the work done more quickly but without any sacrifice of thoroughness. It had become a common matter for that department to work until 6:30 p.m. To meet this we devised the Questionnaire Form System.

QUESTIONNAIRE SYSTEM

The questionnaires may be far from perfect as applied to any one case, but as a system they are far more efficient than the old procedure. There are eight forms which are as follows:

Form 1: Wife's Questionnaire, constitutes the Affidavit for (or in opposition to) Order to Show Cause in re Support, Custody, Attorney's Fees, Restraining Order, etc.

Form 2: Order to Show Cause in re Support, Custody, Attorney's Fees, etc.

Form 3: Husband's Questionnaire, constitutes the Affidavit in opposition to (or for) Order to Show Cause in re Support, Custody, Attorney's Fees, etc.

Form 4: Order for Payment of Support Money, fixing custody of children, for payment of Attorney's Fees, Restraining Order, etc.

Form 5: Contempt Questionnaire, constitutes the Affidavit for Order to Show Cause in re Contempt.

Form 6: Order to Show Cause in re Contempt.

Form 7: Modification Questionnaire, constitutes the Affidavit for Order to Show Cause in re Modification of any previous decree or order.

Form 8: Order to Show Cause in re Modification of any prior decree or order.

An application for temporary alimony, attorney's fees, etc, is a motion (Hite v. Hite, 124 Cal. 389, 393; Moore v. Superior Court, 75 C.D. 192) and hence may be heard upon affidavits. To call the parties as witnesses, swear them, and ask each respectively, all the questions that are contained in the Wife's Questionnaire and Husband's Questionnaire would require at least one-half hour. With twenty to forty or fifty cases a day on the calendar that would obviously be impossible. Furthermore, filling out the questionnaire requires the party to collect his or her thoughts and data before appearing in court, and since the questionnaire of each party must be served upon the other before the hearing, it gives opposing counsel a knowledge of both sides of the controversy. The questions are designed with a deliberate intent to make it as inconvenient as possible for

a party to prevaricate successfully and are grouped to discourage unreasonableness. For example the question addressed to the wife: "What are your necessary monthly expenses?" is followed immediately by the question: "What are your husband's necessary monthly expenses?" and the answers in each case must be itemized and totalled. An alimony seeker (or would-be dodger) cannot in good grace, side by side, claim one standard of living for herself or himself and a far different one for the other spouse. Of course some parties, and some lawyers for them, try to dodge direct answers, but that is even more obvious on the black and white of the printed page than it is in oral testimony and the party attempting it only loses by it.

So far as attorneys are concerned in practice, the use of these forms should save time, both in preparation and presentation. An attorney who has an intelligent stenographer can turn his client and the forms over to her. She should be able to obtain the data and fill them out. In court we find that the questionnaires produce many stipulated orders, and that many cases are submitted upon the questionnaires alone. In any event the questionnaires constitute the direct testimony of both parties and cross-examination is limited to the questions upon which the answers are conflicting. They greatly facilitate the court's work not only upon the hearings but also upon the original applications for the issuance of Orders to Show Cause. Under the former procedure when such an application was made the judge had to read the typewritten complaint or affidavit, sometimes both, and also the typewritten order itself, and frequently had to modify the latter. With the printed questionnaires and orders the judge does not need to read the printed matter because he knows what is there and it requires but a few seconds to glance at the typed portions of the printed form and know whether or not the showing is sufficient and the proposed order proper. My bailiff has kept a check on these matters and has informed me that on the average it takes me but one-fifth as long to determine an application made upon the printed forms as it does when they are not used. I could enumerate many more instances of the advantages of these forms but suffice it to say that with their aid we have accomplished the following: Whereas previously this department was sending out many cases to be heard by a referee — in 1928 there were 130 referee hearings in addition to some 68 special investigations—we are now sending out no cases for referee hearing; we have taken over from the presiding judge teh original issuance of all orders to show cause in these matters; and with such increased work are finishing our calendar ordinarily by 3:30 p.m., although previously the department frequently worked until 6:30 p.m. and sometimes later.

In abandoning the referee hearings we have not abandoned the benefits derived from special investigations in child custody cases. We have only abolished the practice of having any person other than a judge conduct a more or less formal hearing. Assistant Probation Officers, Miss Mary Maxwell and Mrs. Mary Cook, who have been so kindly loaned to the court for some years, are still available to us through the courtesy of W. H. Holland, Chief Probation Officer, and his chief deputy, W. H. Prestcott. The practice of asking the parties to stipulate to hearings before a referee was evolved some years ago because the calendar had become so heavy that even with the aid of investigators one judge could not give the necessary time to matters involving the custody of children, and it was also believed that the less formal atmosphere would be conducive to more accurate determinations of child-welfare. This was a splendid thought and much valuable and constructive work was done. It seemed to be the consensus of opinion, however, among the members of the bar and others acquainted with the situation, that the real value of this phase of the work existed not so much in the hearings, which necessarily partook of some formality and required rulings upon evidence and the making of findings and conclusions, as in the ability of the investigators, when acting as such, and not as judges, to go on the outside, visit people in their homes, children at their schools, etc., and by testimony or report of their personal observations, supplement the work of the judge and the information available to him, rather than to substitute for him in the taking of evidence upon hearings.

Furthermore, we recognized that in many cases the evidence which was introduced on the question of child custody,

either before a judge or referee, was also material on the issue of divorce itself, and hence that it was a duplication and waste of time for such evidence to be heard upon the preliminary question of custody, and then a few months later to be introduced again upon the final trial of the case. Accordingly, we have made arrangements so that the Domestic Relations Department can set cases of that character down for practically immediate trial upon all the issues.

The work of the Domestic Relations Department is made up of four types of proceedings: (1) Applications for support or suit money; (2) Applications for custody of children; (3) Contempt Proceedings; (4) Proceedings for the modification of prior orders or decrees.

I have already discussed the handling of the first two, relative to which the printed domestic relations forms 1, 2, 3 and 4 are appropriate. The third matter, Contempt Proceedings, has caused us a great deal of concern. Orders to pay money for alimony, attorney's fees, support of children, etc., are, if the party to be charged has notice of them, and the ability to comply therewith and wilfully refuses so to do, enforcible by such proceedings, i.e., the wilful refusal to obey such order is punishable as a contempt, and, if the party has a continuing ability to perform, he may be imprisoned until he does comply therewith. But putting a man in jail does not buy food for hungry children (or lawyers).

There are two types to be considered here: (1) the party who can perform but will not; (2) the person who cannot by reason of lack of ability. Strictly speaking it is only those in the first class who are really subject to commitment for contempt, but those in the latter class are in the majority in contempt proceedings, and they are the ones who present the greatest difficulty.

With respect to those of the first class, if the order is reasonable and their refusal to perform unreasonable, prompt commitment to jail nearly always produces the desired result. With respect to those of the second class, if the order is not wholly and hopelessly beyond their powers of performance, an intimation, on the one hand, of criminal proceedings for failure to provide, and encouragement and assistance on the other hand usually produce good results. Here again the probation department has offered us assistance. Mr. Holland is inaugurating a free employment bureau for "down and outers."

The most important point, in respect to contempt proceedings, and what I want to emphasize most strongly, is this: the answer to the great majority of contempt cases lies not in more jail sentences but in more reasonable orders. It is difficult for the advocate, knowing the dire needs of his client, and for his client who is suffering those needs, to refrain from seeking to exact orders that are commensurate with the client's needs but incommensurate with the ability of the man to pay; sometimes also orders are sought for sums beyond the legitimate needs of the client but within the ability of the husband to pay. In either case the result is bad; the man becomes hopeless and dejected or angry and defiant; he will not and he cannot do as well as he would and could if the amount were smaller; or, if the amount is unreasonably large, and he has the ability, he becomes imbued with a sense of injustice and anger and seeks ways and means of escaping. So if the court's order at times seems inadequate, attorneys are asked to believe that the court, in the light of its experience, is endeavoring to do what will be best eventually for all concerned.

Forms 5 and 6 are for use in contempt proceedings. Form 5 is an affidavit. It has been held that such proceedings are in the nature of criminal proceedings and that the affidavit constitutes the complaint. We believe that such form contains the essential averments and we know that its use conserves our time because in order to fill it out the party must have computed the amounts paid and delinquent, and prior to its use it was remarkable how many people came to court on such proceedings and had not until taking the witness stand made any real effort at accounting.

Further to avoid disputes along that line we are now making all orders for the payment of money payable through the court trustee, W. H. Holland, and his office keeps books accurately.

Forms 6 and 7 are for use in modification proceedings. Paragraph 2 of form 6 calls attention to the legal proposition that generally speaking an order or decree can be modified in such a proceeding only on account of changes in circumstances and

conditions occurring *since* the making of the order sought to be modified; the proposition is *res adjudicata* as to all matters passed on at the time of the original order.

TOPICAL INDEX OF POINTS AND AUTHORITIES IN DOMESTIC RELATIONS CASES

ALIMONY PENDENTE LITE:

Application for is a motion and may be heard on affidavits. Hite v. Hite, 124 Cal. 389, 393. If party has appeared by attorney, notice of motion for alimony pendente lite may be served upon the attorney. Moore v. Superior Court, 75 Cal. Dec. 192.

Automatically stops upon rendition of interlocutory decree. McCaleb v. McCaleb, 177 Cal. 147.

Alimony pendente lite pending appeal may be refused where divorce has been granted husband. Newlands v. Superior Court, 171 Cal. 741.

ALIMONY JUDGMENT FOR:

Not subject to modification as to sums accrued and past due. Cumings v. Cumings, 58 Cal. App. Dec. 678; Soule v. Soule, 4 Cal. App. 97; Parker v. Parker, 75 Cal. Dec. 559.

ATTORNEY'S FEES:

May be collected from estate of deceased husband when it has been ordered pursuant to and is evidenced by an agreement of the parties showing such intention. Estate of Mesmer, 57 Cal. App. Dec. 215.

Alimony as such when merely ordered by the court and not evidenced by agreement of the parties ceases upon the death of either party. Parker v. Parker, 193 Cal. 478.

Alimony for limited period may be increased and extended for life of the parties upon showing changed circumstances meriting such order. Smith v. Smith, 57 Cal. App. Dec. 170.

ANNULMENT OF MARRIAGE; PARTIES:

Both parent and minor child by guardian ad litem are proper parties. Jones v. Alameda, 54 Cal. App. Dec. 274. Alimony in annulment cases is not allowable after judgment of annulment. Withers v. Superior Court, 56 Cal. App. Dec. 354.

ATTORNEY'S FEES:

Agreement for upon contingency basis in divorce case is void. Newman v. Freitas, 129 Cal. 283.

Order to pay directly to attorney is void —beyond jurisdiction—court cannot punish for contempt for failure to pay. Pennel v. Superior Court, 54 Cal. App. Dec. 1159.

Allowance for past services or expenses may not be made except where the payment is shown to be necessary to enable the wife further to prosecute or defend the action. Newlands v. Superior Court, 171 Cal. 741; Loveren v. Loveren, 100 Cal. 493.

Agreement in property settlement to pay attorney's fees in divorce action is contra bonos mores and void. McCahan v. McCahan, 47 Cal. App. 173, 175. But such agreement is enforceable if the same has been approved by the court. Loveren v. Loveren, 106 Cal. 509, 513.

Allowance of may be continued to time of trial only by stipulation written and filed with the clerk or entered in the minutes, otherwise order for same at time of trial is erroneous. Shepard v. Shepard, 15 Cal. App. 614; White v. White, 58 Cal. App. Dec. 587; Newlands v. Superior Court, 171 Cal. 741, 745.

Are allowable only on theory that order is necessary to enable wife to prosecute or defend action, but the fact that wife had $1400 separate estate held not to prevent allowance where there was no showing that such estate was immediately available for her use. Speck v. Speck, 56 Cal. App. Dec. 632.

Allowance after decree; held not to be res adjudicata as to subsequent costs and fees. Smith v. Smith, 57 Cal. App. Dec. 301; Lamborn v. Lamborn, 190 Cal. 794.

ATTORNEY; SERVICE OF PROCESS UPON:

Notice of motion to modify decree, etc., may be served upon attorney. Moore v. Superior Court, 75 Cal. Dec. 192.

Order to show cause in contempt proceedings may be served upon attorney of record where party is out of State. Shibley v. Superior Court, 75 Cal. Dec. 1.

CAUSE OF ACTION; ACCRUAL OF:

Cause of action must be completely accrued before filing of pleading upon which divorce is based. Zartarian v. Zartarian, 47 Cal. App. 90.

SUPPLEMENTAL PLEADING:

The action is regarded as commenced when the new cause of action is filed. Valensin v. Valensin, 73 Cal. 106.

CONTEMPT; EFFECT OF ON RIGHT TO PROCESS:

No person can rightfully invoke aid of court while he stands in contempt thereof and application for final decree by person

who is in contempt will not be granted. Weeks v. Superior Court, 187 Cal. 620.

Party in jail for alleged continuing contempt has right to hearing every ten days relative to ability to perform. Code of Civil Procedure, secs. 1143-1146; In re Wilson, 75 Cal. 580.

CRUELTY; EVIDENCE AND PLEADING:

Desertion, intemperance, adulterous acts, etc., may be shown in evidence as cruelty. Curl v. Curl, 130 Cal. 638; Dupes v. Dupes, 43 Cal. App. 67.

Tricks of habit held not to constitute ground for divorce where not wilfully and deliberately done for purpose of inflicting suffering. Dahnke v. Dahnke, 55 Cal. App. 13. But traits of habit which are not those of a normal person and which are deliberately and maliciously indulged in may constitute cruelty. Hansen v. Hansen, 54 Cal. App. Dec. 887.

EVIDENCE:

Taking of in default divorce held mandatory but not jurisdictional. [illegible] Superior Court, 195 Cal. 364.

INJUNCTIONS; TEMPORARY RESTRAINING ORDERS:

May not be granted to compel one spouse to leave the common home. Civil Code, sec. 157; Luitweiler v. Luitweiler, 57 Cal. App. 751. This reasoning probably also holds true with respect to the frequently sought restraining orders enjoining a spouse from attacking, molesting or harassing the other. In the Luitweiler case our Appellate Court quoted with approval the language of the Supreme Court of Iowa in the case of Moir v. Moir, 182 Ia. 370, in which case an injunction had been sought to prevent a wife from killing her husband. The court said: "According to the plaintiff, one who has made it clear that she has murderous intentions, and has given probable cause to believe that she will carry them out, will be adequately restrained by an injunctional order. This means that, while the punishment for murder will be no deterrent, the danger of comparatively very mild punishment for contempt of court will insure safety from murderous attack."

Obviously the remedy in such cases is through penal laws.

PROPERTY SETTLEMENT AGREEMENTS:

Merely approving a settlement agreement or incorporating it in a decree is not tantamount to ordering the performance of such agreement and does not make failure to perform it a contempt of court. Where there is a contract and also an order for alimony in the decree the party has concurrent remedies—on the judgment and by independent action on the contract. Roberts v. Roberts, 53 Cal. App. Dec. 419; Newell v. Newell, 28 Cal. App. 784; Parker v. Parker, 193 Cal. 478.

Such agreements are void in so far as they attempt to limit the liability of a parent for the support of a child. D'Arcy v. D'Arcy, 55 Cal. App. Dec. 558.

Such agreements if not approved by the court may be practically disregarded without even requiring return of consideration. Moog v. Moog, 75 Cal. Dec. 301; Chadwick v. Chadwick, 57 Cal. App. Dec. 1173. But where the settlement agreement has been approved by the court the rights of the parties thereunder become thereby res adjudicata. Hobson v. King, 57 Cal. App. Dec. 400.

PROPERTY; DISPOSAL OF ON INTERLOCUTORY OR FINAL DECREES:

It is proper to determine in the interlocutory decree how property should be assigned but actual assignment should await rendition of the final decree. Strupell v. Strupell, 59 Cal. App. 526; Radich v. Radich, 64 Cal. App. 605. But in cases where the interlocutory decree has disposed of the property and has become final through lapse of time for appeal such disposition has been held valid. Abbott v. Superior Court, 69 Cal. App. 660; In re O'Connell, 80 Cal. App. 126; Pereira v. Pereira 156 Cal. 1.

RESIDENCE: MANDATORY BUT NOT JURISDICTIONAL:

Residence in the county and State for the statutory periods was said to be jurisdictional in several cases, including that of Flynn v. Flynn, 171 Cal. 746, but more recently in Kelsey v. Miller, 75 Cal. Dec. 72 at 89, the Supreme Court considered the question specifically and held that failure of the trial court to comply with section 128 of the Civil Code would be "nothing more than error in the exercise of its jurisdiction."

FINDINGS OF FACT:

Held to be unnecessary to support order for custody of children; further held that allegations in pleadings regarding custody are not necessary to support an order

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The President's Page

EDITOR'S NOTE: *President Guy Richards Crump has delegated the writing of this page for the present issue to Mr. Norman A. Bailie, Senior Vice-President of the Bar Association.*

LOS ANGELES BAR ASSOCIATION

Fellow Members,

Los Angeles Bar Association:

What is the Los Angeles Bar Association? It is a voluntary association of approximately twenty-five hundred lawyers in Los Angeles County. It is affiliated with five bar associations located in the various cities and towns of the county.

What are its objects? To maintain a high ethical standard among the men and women practicing in this county; to assist in maintaining a high standard of efficiency in the courts; to maintain a constant contact with the judges on the bench to the end that through the co-operation of bench and bar there may be as much expedition in the administration of justice in this county as is consistent with thorough and conscientious work; through its recommendations to give the voting public of this county the benefit of the experience and advice of its members in the matter of the election of judges; to examine into proposed legislation affecting the administration of justice and to give to the legislators of this State the results of its deliberations as to the advisability or inadvisability of such proposed legislation; to take cognizance of facts and circumstances in this county affecting the administration of justice and to render a public service to the end that the constitutional rights of the people may be protected and maintained; to assist in the amicable adjustment of disputes between lawyers, and between lawyers and their clients; and, in general, to perform the full duty which the members of the Association as officers of the court owe to the courts and the public by virtue of their profession.

Did the necessity for the existence of the Los Angeles Bar Association cease with the organization of the State Bar of California? No. The State Bar of California is controlled by a Board of Governors composed of fifteen members representing all lawyers in the entire State. The Board of Governors is engaged to the limit of its capacity with duties affecting the entire State. It is performing a very wonderful work. But because of its wide scope and the multitude of its activities, it is not possible for the Board of Governors to give its concentrated attention to local problems. Neither is it possible for the State Bar of California to keep in as close touch with the activities of its various committees as is the case of the local Bar Association. Furthermore, Los Angeles Bar Association and the affiliated Associations are rendering an invaluable service to the Board of Governors of the State Bar of California in its work, and our Association is working in close conjunction with the State Bar. There is not, and there never has been, any conflict between Los Angeles Bar Association and the State Bar of California. But, on the contrary, there always has been the closest cooperation and mutual assistance between them.

How are the officers and trustees of the Los Angeles Bar Association chosen? They are nominated by a nominating committee elected by the members at a meeting called for that purpose, and the members have the right to make other nominations by petition. The candidates for office are elected by ballot of the entire membership.

How does the Los Angeles Bar Association function? It has a president, senior vice-president, junior vice-president, secretary and treasurer, as well as a Board of Trustees consisting of eleven members including the above officers. The president, with the assistance of the Board of Trustees, appoints committees to handle the various activities in which the Association is engaged, and these committees are under the supervision of a master committee. The various committees report in the first instance to the master committee and that committee reports directly to the Board of Trustees, which Board finally passes on the reports of all committees. All of these committees are composed of members of the Association chosen for their fitness to do the particular kind of work assigned to them.

What is the duty of the members of Los Angeles Bar Association? This is your Association. It can properly fill its place in the community only by the whole-hearted

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co-operation of all of its members. It is not possible for twenty-five hundred men and women to think alike on all subjects. The policies of the Association are shaped by the majority vote of its members. All true American citizens are expected to abide by the will of the majority. It is not claimed that our Association is perfect. The constitution and by-laws of the Association form a complete scheme for correcting any errors that may exist, and for the making of improvements which may be necessary or advisable. The Board of Trustees welcomes all constructive criticism and suggestions for improvement.

What is the attitude of the public toward our Association? The people of Los Angeles County have come to recognize the Los Angeles Bar Association as a civic organization making an honest, conscientious and energetic effort to do a public service. They know that our objects are altruistic and unselfish, and they have many times, and in many ways demonstrated their confidence in our Association, and their appreciation of its public-spirited work.

Los Angeles Bar Association occupies a unique position in the community, because it is composed of a large, well-organized body of professional men and women in one profession, all working toward a common end. The Association expects each and every member to do his or her part, to the end that the Association may successfully carry on the work in which it is now engaged.

NORMAN A. BAILIE,
Senior Vice-President.

L. A. BAR ASSOCIATION MONTHLY DINNER AND MEETING

CHAMBER OF COMMERCE

Thursday Evening, May 16, 1929, 6:00 P. M.

We Don't Know the Half! !

Learn the other half to your consternation and surprise by attending this meeting.

JOSEPH L. LEWINSON will speak on "LAWLESS ENFORCEMENT OF THE LAW."

Mr. Lewinson is well known as a lawyer and speaker. He has contributed articles to leading law reviews and the American Bar Association Journal.

HONORABLE CHARLES FREMONT AMIDON will address us on "WHAT WILL WE DO ABOUT IT?"

Judge Amidon was formerly United States District Judge, North Dakota, for a number of years, during a large amount of which time he served with distinction on the United States Circuit Court of Appeals.

Following the principal speakers the meeting will be thrown open for general discussion. This is your opportunity to speak or for evermore hold your peace. Do not pass up this opportunity.

We expect to have the following guests:

CHIEF JUSTICE OLIVER P. COSHAW of Oregon
CHIEF JUSTICE ALFRED C. LOCKWOOD of Arizona
CHIEF JUSTICE EDWARD A. DUCKER of Nevada
CHIEF JUSTICE JOHN R. MITCHELL of Washington
CHIEF JUSTICE GEORGE MALCOLM of the Philippine Islands
DISTRICT ATTORNEY FITTS
COUNTY PUBLIC DEFENDER VERCOE
CITY PROSECUTOR NIX
CITY PUBLIC DEFENDER ORFILA, and others.

This will be an extraordinary meeting and not too long.

Guests of Members Are Welcome — Informal

Dinner $1.50

Please Return Your Reservation Card Promptly

A large number of reservations are already in and a capacity attendance is anticipated.

PROGRAM COMMITTEE:
KIMPTON ELLIS, *Chairman*
FLORENCE M. BISCHOFF
JUSTIN MILLER
LOUIS G. GUERNSEY
HONORABLE CLAIR S. TAPPAAN.

Chandler, Wright & Ward

Announce that

Mr. Leo S. Chandler

Formerly President of the California Trust Company
has become a member of this firm as of this date.

The firm name will remain unchanged.

617 A. G. Bartlett Bldg.
Los Angeles

April 22, 1929

L. FRANK OTTOFY

Announces that the firm of McPherrin & Ottofy has been dissolved
and that he will continue the practice of law at the present location
A. G. Bartlett Building
Los Angeles

April 15, 1929

REMOVAL OF BAR ASSOCIATION OFFICES

Los Angeles Bar Association has opened new offices at Suite 1126 Rowan Bldg., Fifth and Spring Streets, after 17 years in the old offices in the I. W. Hellman Building.

The new suite has three large rooms, including a public reception hall, secretary's office and board room where fairly large committee meetings can be held.

Acting Secretary J. L. Elkins continues in charge, with Mrs. Jean Mallory and Mrs. Mabel Dressler as his assistants.

The telephone number continues to be VAndike 5701.

Note on Libel Against a Corporation*

By HONORABLE LEON R. YANKWICH, *Judge of the Superior Court, Los Angeles County; Author of CALIFORNIA PLEADING & PROCEDURE.*

In the early history of corporate development doubt was expressed whether a corporation could sue for libel without showing special damage.

In an early English case,[1] Pollock, C. B. stated:

"That a corporation at common law can sue in respect of a libel, there is no doubt. It would be monstrous if a corporation could maintain no action for slander of title, through which they lost a great deal of money. It could not sue in respect of any imputation of murder, or incest, or adultery, because it could not commit those crimes; nor could it sue in respect of a charge of corruption, for a corporation cannot be guilty of corruption, though the individuals composing it may. But it would be very odd if a corporation had no means of protecting itself against wrong; and, if its propert is injured by slander, it has no means of redress except by action. Therefore it appears to me clear that a corporation at common law may maintain an action for libel by which its property is injured."

There is in this language a direct intimation that special damage is of the essence of such an action.

And so it was interpreted by the courts. In a later case, Day, J. said:[2]

"This is an action brought by a municipal corporation to recover damages for what is alleged to be a libel on the corporation itself, as distinguished from its individual members or officials. The libel complained of consists of a charge of bribery and corruption. The question is whether such an action will lie. I think it will not.

"It is altogether unprecedented, and there is no principle on which it could be founded. The limits of a corporation's right of action for libel are those suggested by Pollock, C. B., in the case which has been referred to. *A corporation may sue for a libel affecting property, not for one merely affecting personal reputation. The present case falls within the latter class.*"

The doubt on the subject was removed by the judgments in the case of South Hetton Coal Company, Ltd., v. North-Eastern News Association, Ltd.[3] In that case, a newspaper published an article describing the cottages owned by the plaintiff company, the general effect of which was to describe the village as in a highly insanitary state, and the houses as, for the most part, being unfit for habitation, from absence of proper and decent conveniences, inadequate accommodations for the occupants, and want of sufficient water supply.

After a verdict for the plaintiff, it was argued in the Court of Appeal that no special damage having been proved, there could be no recovery.

The Court of Appeal by its judgment set at rest the doubts heretofore existing and held that a corporation may have its reputation as a corporation injured by a libel so as to entitle it to recover damages, like an individual, without proof of special damages, i. e., actual pecuniary loss.

The judgment read by Lord Esher, M. R., contains a statement which has since been accepted by courts and writers as embodying the true principles on this subject.

He said:

"I have considered the case, and I

1. Metropolitan Saloon Omnibus Company v. Hawkins, 4 H. & N. 87 (1859).
2. The Mayor, Alderman and Citizens of Manchester v. Williams, (1891) 1 Q. B. 94.
3. (1894) 1 Q. B. 133.

*EDITOR'S NOTE: *This treatment is part of Chapter III of a work by Judge Yankwich entitled* ESSAYS IN THE LAW OF LIBEL. *The book is being published by Parker, Stone & Baird Company, and will be off the press June first.*

Judge Yankwich is eminently qualified as an authority on libel and kindred subjects, having specialized in this intricate branch of the law for many years as a practicing attorney. As counsel for the Los Angeles RECORD *in the famous case of Snively v. Record Publishing Company,* 185 *Cal.* 565, *he was responsible for securing from the Supreme Court of California a decision liberalizing the rule of privilege in California.*

have come to the conclusion that the law of libel is one and the same as to all plaintiffs; and that, in every action of libel, whether the statement complained of its, or is not, a libel, depends on the same question—viz., whether the jury are of opinion that what has been published with regard to the plaintiff would tend in the minds of people of ordinary sense to bring the plaintiff into contempt, hatred, or ridicule, or to injure his character. The question is really the same by whomsoever the action is brought—whether by a person, a firm, or a company. But though the law is the same, the application of it is, no doubt, different with regard to different kinds of plaintiffs. There are statements which, with regard to some plaintiffs, would undoubtedly constitute a libel, but which, if published of another kind of plaintiffs, would not have the same effect. For instance, it might be stated of a person that his manners were

contrary to all sense of decency or comity, and such that, if the statements were true, they would render him deserving in the minds of persons of ordinary sense of contempt, hatred, or ridicule; but, if the same thing were said with regard to a firm, or company, it would be impossible that it should have the same effect, because a firm or company as such cannot have indecent or vulgar manners. Therefore, although the law is the same with regard to libel on a firm or company as with regard to libel on a person, the conditions under which the particular statement can be libelous may not exist with regard to them. There are other statements which would have the same effect, whether they were made with regard to a person, or a firm or company; as for instance, statements with regard to conduct of business. It may be published of a man in business that he conducts his business in a manner which shows him to be a foolish or incapable man of business. That would be a libel on him in the way of his business, as it is called—that is to say, with regard to his conduct of his business. If what is stated relates to the goods in which he deals, the jury would have to consider whether the statement is such as to import a statement as to his conduct in business. Suppose the plaintiff was a merchant who dealt in wine, and it was stated that wine which he had for sale of a particular vintage was not good wine; that might be so stated as only to import that the wine of the particular year was not good in whoseoever hands it was, but not to imply any reflection on his conduct of his business. In that case the statement would be with regard to his goods only, and there would be no libel, although such statement, if it were false and were made maliciously, with intention to injure him, and it did injure him, might be made the subject of an action on the case. On the other hand, if the statement were so made as to import that his judgment in the selection of wine was bad, it might import a reflection on his conduct of his business, and show that he was an inefficient man of business. If so, it would be a libel. In such a case a jury would have to say which sense the libel really bore; if they thought it related to the goods only, they ought to find that it was not a libel; but if they thought it related to the man's conduct of business, they ought to find that it was a libel. With regard to a firm or a company, it is impossible to lay down an exhaustive rule as to what would be a libel on them. But the same rule is applicable to a statement made with regard to them. Statements may be made with regard to their mode of carrying on business, such as to lead people of ordinary sense to the opinion that they conduct their business badly and inefficiently. If so, the law will be the same in their case as in that of an individual, and the statement will be libelous. Then, if the case be one of libel—whether on a person, a firm, or a company—the law is that the damages are at large. It is not necessary to prove any particular damage; the jury may give such damages as they think fit, having regard to the conduct of the parties respectively, and all the circumstances of the case."

Lopes, L. J., said:

"I am of opinion that, although a corporation cannot maintain an action for libel in respect of anything reflecting upon them personally, yet they can maintain an action for libel reflecting on the management of their trade or business, and this without alleging or proving special damage. The words complained of, in order to entitle a corporation or company to sue for libel or slander, must injuriously affect the corporation or company as distinct from the individuals who compose it. A corporation or company could not sue in respect of a charge of murder, or incest, or adultery, because it could not commit these crimes. Nor could it sue in respect of a charge of corruption or of an assault, because a corporation cannot be guilty of corruption or of an assault, although the individuals composing it may be. The words complained of **must attack** the corporation or company in the method of conducting its affairs, must accuse it of fraud or mismanagement, or must attack its financial position. Can it be contended that, if words are written attributing to a banking company insolvency, an action will not lie, and that without alleging or proving special damage?"

Cozens-Hardy, M.R., commenting on the

decision in a later case,[4] summed it up as follows:

"A company can have a reputation which is not the reputation of the individual directors, but the *reputation of the company*, the reputation which the company itself and itself alone can protect by means of an action for libel."

Of course, by the very nature of things, many statements which might constitute a libel against an individual could not be a libel against a corporation. However,

"If the written or printed matter consists of an accusation that the corporation or company has been guilty through its agents of corruption or misconduct or any other wrongful act, the corporation or company could maintain an action for libel."[5]

A corporation can only be damaged by an attack upon its business methods,

"of a nature calculated and tending to injuriously affect it pecuniarily in its business reputation and credit; but when it may fairly be inferred from a malicious and false publication that it will not injuriously affect the corporation in its business and credit, then the article is libelous *per se* and damages are presumed."[6]

Illustrative of the character of imputations which have been held libelous against corporations are the following:

Accusing a company of fraudulently and illegally misrepresenting the nature of the cargo contained in its ship by falsifying the manifest and other documents and that it was engaged in violating the laws of this country by conveying, under circumstances of concealment and misrepresentation, a large supply of copper to Norway, whence it could be easily transported to the Central powers with which we were then at war, and which in accordance with general knowledge were much in need of said material.[7]

Publication of two anonymous letters stating of the plaintiff, a temperance society, that its leaders are "scabs, men who have been in the reformatory, men who have run away to this country, wife deserters, etc.," that "the plaintiff profits through conducting gambling games, etc."[8]

Charge that a corporation placed a negro foreman as boss over white girls; and that it was on the unfair list, when the corporation maintained a union shop and had union labor patronage.[9]

Charge that a company is a second hand dealer, puts in inferior work, has a scab establishment and has not a mechanic in its place.[10]

Charging that a coal dealer, at the time of a coal famine, when the people were suffering for fuel, not only charged extortionate prices for its coal, but actually refused to sell coal, even at such extortionate prices, to people suffering from sickness.[11]

"Such a charge," said the court, "is libelous, because imputing *mean* and *abhorent* conduct to the plaintiff in the conduct of its business, and thus tending necessarily to injure it in such business."

Where the charge is against the officers, and does not directly concern the corporation, or is not in direct relation to its business, no recovery can be had by the corporation.[12]

Thus where the charge was made that a person, who was the general manager, treasurer and owner of a majority of the stock, of a corporation engaged in the business of furnishing special police or night watchmen—was a bad man, and a dangerous character, and under suspicion of having set fire to a barn, it was held that this was spoken of the individual, and the corporation could not sue.[13]

4. Willmott v. London Road Car Company, Ltd., (1910) 2 Ch. 525.
5. Frazer on Libel and Slander, 5th Ed., p. 133. See, Gatley on Libel and Slander, p. 414. Newell on Slander and Libel, 4th Ed., section 309.
6. Phillipp v. N. Y. Staats Zeitung, 165 App. Div. 377, 150 N. Y. S. 1044 (1914). (Publication of an article criticising plantiff's play.)
7. Der Norske etc. v Sun etc. Assn., 226 N. Y. 1, 122 N. E. 463 (1919).
8. Finnish Temperance Society v. The Finnish Society Publishing Co., 238 Mass. 345; 130 N. E. 845 (1921).
9. Axteon-Fisher Tobacco Co. v. Evening Post, 169 Ky. 64; L. R. A. 1916 E. 667 (1916).
10. Penn Iron Works Co. v. Henry Voght Machine Co., 29 Ky. L. Rep. 861, 96 S. W. 551; 8 L. R. A. (N. S.) 1023 (1906).
11. Gross Coal Co. v. Rose, 126 Wis. 24, 2 L. R. A. (N. S.) 741 (1905).
12. Memphis Telephone Co. v. Cumberland Telephone Co., 145 Fed. 904, (1906); Adirondack Record v. Lawrence, 202 App. Div. 251, 195 N. Y. S. 627 (1922); Warner Instrument Co. v. Ingersoll, 157 Fed. 311 (1907).
13. Brayton v. Cleveland Special Police Co., 63 Ohio St. 83, 57 N. E. 1085, 52 L. R. A. 525 (1900).

Case Note

NAVIGABLE WATERS — CHICAGO SANITARY DISTRICT

The case of State of Wisconsin v. State of Illinois et al., 49 Sup. Ct. Rep. 163, decided January 14, 1929, the opinion being written by Mr. Chief Justice Taft, contained the following rebuke of the Sanitary District of Chicago:

"In increasing the diversion from 4,167 cubic feet a second to 8,500, the drainage district defied the authority of the national government resting in the Secretary of War. And in so far as the prior diversion was not for the purposes of maintaining navigation in the Chicago river it was without any legal basis, because made for an inadmissible purpose. It therefore is the duty of this court by an appropriate decree to compel the reduction of the diversion to a point where it rests on a legal basis, and thus to restore the navigable capacity of Lake Michigan to its proper level. The Sanitary District authorities, relying on the argument with reference to the health of its people, have much too long delayed the needed substitution of a suitable sewage plant as a means of avoiding the diversions in the future. Therefore they cannot now complain if an immediately heavy burden is placed upon the district because of their attitude and course. The situation requires the district to devise proper methods for providing sufficient money and to construct and put in operation with all reasonable expedition adequate plants for the disposition of sewage through other means than the Lake diversion."

The Sanitary District of Chicago, organized under the Illinois Act of 1889, was completed in 1890. It embraced an area of 185 square miles. By later acts it was increased to approximately 438 square miles extending from the Illinois State line on the south and east to the northern boundary of Cook County on the north with about 34 miles of frontage on Lake Michigan embracing the metropolitan area of Chicago, consisting of a total of 54 cities, towns and villages.

As indicated by its name, the Sanitary District of Chicago had for its purpose the sanitation of the above described metropolitan area. By the diversion of water from the great lakes system into the Mississippi watershed through the works built for sanitation purposes it was found by the master appointed by the court, Mr. Charles Evans Hughes, that the mean level of the lake and connecting water-ways was diminished by approximately six inches. It was also found by the master that the damage due to the diversion at Chicago related to navigation and commercial interests, to structures, to the convenience of summer resorts, to fishing and hunting grounds, to public parks and other enterprizes, and to riparian property generally. Had water been available for an additional six inches of draft the fleet of ships on the great lakes could have handled for the year 3,346,000 tons of freight more than was actually transported. The loss in tonnage of the total business of the lakes for 1923 incident to a six inch deficiency of draft exceeded four million tons and the average water haul for the year was eighty-eight cents per ton.

The exact issue before the court was whether the State of Illinois and the Sanitary District of Chicago by diverting 8,500 cubic feet from the waters of Lake Michigan have so injured the riparian and other rights of the complainant States bordering the great lakes and connecting streams by lowering their levels as to justify an injunction to stop this diversion and thus restore the normal level. Defendants asserted that such a diversion was a result of congressional action in the regulation of interstate commerce, that the injury, if any, resulting is damnum absque injuria to the complaining States. The complaining States replied that the regulation of interstate commerce under the Constitution does not authorize the transfer by Congress of any of the navigable capacity of the great lakes system of waters to the Mississippi basin, that is, from one great watershed to another; second, that the transfer is contrary to the provision of the Constitution forbidding the preference of the ports of one State over those of another; and, third, that the injuries to the complainant States deprive them and their citizens and their property owners of property without due process of law, and of the natural advantages of their position,

contrary to their sovereign right as members of the Union.

The court in reaching its conclusion said that it may be that some flow from the lake is necessary to keep up navigation in the Chicago river which really is part of the port of Chicago. However, the court pointed out that that amount was negligible as compared with 8,500 second feet now being diverted. Continuing, the court said:

> "Hence, beyond that negligible quantity, the validity of the secretary's permit derives its support entirely from a situation produced by the Sanitary District in violation of the complainants' rights, and but for that support complainants might properly press for an immediate shutting down by injunction of the diversion, save any small part needed to maintain navigation in the river. In view of the circumstances we think they are entitled to a decree which will be effective in bringing that violation and the unwarranted part of the diversion to an end."

Nevertheless the court said that in keeping with the principles on which courts of equity condition their relief and by way of avoiding any unnecessary hazard to the health of the people of that section the supreme court decree should be so framed as to accord to the Sanitary District a reasonably practicable time within which to provide some other means of disposing of the sewage, reducing the diversion as the artificial disposition of the sewage increases from time to time until it is entirely disposed of thereby, when there should be a final and permanent operative and effective injunction.

The Wisconsin v. Illinois case recognized riparian rights in the following language:

> "It is further argued by complainants that while the power of Congress extends to the protection and improvement of navigation it does not extend to its destruction or to the creation of obstruction to navigable capacity. This court has said that while Congress, in the exercise of its power, may adopt any means having some positive relation to the control of navigation and not otherwise inconsistent with the Constitution (United States v. Chandler-Dunbar Co., 229 U. S. 53, 62, * * * it may not arbitrarily destroy or impair the rights of riparian owners by legislation which has no real or substantial relations to the control of navigation or appropriateness to that end.) (United States v. River Rouge Improvement Company, 269 U. S. 411, 419, * * * ; Port of Seattle v. Oregon and Washington railroad, 255 U. S. 56, 63, * * *.)."

The dilatory manner in which the Sanitary District of Chicago failed to take steps for the disposal of its sewage other than by the use of water from the lake reminds one of the period of time which passed before the decree of the Supreme Court of the United States in the case of Virginia v. West Virginia, 238 U. S. 202, was carried into effect. Incidents of this nature in our own judicial history leads one to believe that even though the permanent Court of International Justice at the Hague does not have an army at its disposal to enforce its decrees, nevertheless those decrees may come to be recognized in much the same manner that the State and other political subdivisions of the United States come to recognize the decrees of the Supreme Court. As indicated by the language of the Chief Justice cited at the beginning of this note, we do not have to go far afield to find instances of judicial decisions being disregarded. However, in the long run, those decisions are recognized quite largely by reason of their own inherent worth rather than by any coercion of a physical nature.

REUEL L. OLSON

ERRATA RE ARTICLE, "BANK AND CORPORATION FRANCHISE TAX LAW"

(Published in Vol. 4, No. 8 of THE BULLETIN)

Page 230, sections F and G, line 6, the word "shall" should read "may."

Page 231, section I, line 2, "of interest" should follow "rate."

Page 232, line 2, "not" should follow "will."

Page 232, paragraph on "Returns," line 2, "for" should replace "on."

Page 232, paragraph on "Returns," line 7, add "to be prepared on the basis of the calendar," etc.

Page 234, under "Basis for Gain or Loss," paragraph 4, line 5, add "March 1, 1913 value," cost, etc.

Annual Report of the Junior Committee for 1928-29

(Filed February 19, 1929)

To the Los Angeles Bar Association:

Since the Junior Committee is a newly organized group which had its inception during the present administration, we deem it best to make the report a chronological narrative of the preliminary planning, the purposes, the organization, and the activities of the Committee thus far.

The idea of organizing the young lawyers of Los Angeles originated with President Morrow, and was perhaps a natural outgrowth of the giving of special attention to men young in the practice which began with the creation of "Newly Admitted Special" memberships in the Bar Association a couple of years ago. At Mr. Morrow's suggestion, a group of young men from several different law schools met, planned an organization meeting, discussed in a general way the formation of the group, and agreed to "pass the word along" to as many young lawyers as possible so that the first committee meeting might be well attended. The following were the men who were asked to attend this preliminary conference as a nucleus for the committee to be formed:

R. H. Purdue, Maurice Jones, Jr., and Milan E. Ryan, of Southern California; George Chatterton, Thomas H. McGovern and Leo Falder of Loyola; Max E. Utt and John Richer of Harvard; William T. Coffin, Martin Gang, and Herman Selvin of California; Arthur Waite, Grant Cooper, Vincent Scott, F. B. Mullendore, and L. G. Hayford of Southwestern; H. Sidney Laughlin and Charles E. Beardsley of Stanford.

Mr. Beardsley acted as temporary chairman, and Mr. Laughlin kept a record of the proceedings as secretary pro tem.

The first general meeting of the Committee was held Thursday evening, May 24, 1928, in the Chamber of Commerce Building, and was a dinner meeting. Hubert T. Morrow and Judge Clair S. Tappaan were the speakers; the objects of the group were discussed, and the nature of its organization was determined by popular vote. The name decided upon was "Junior Committee of the Los Angeles Bar Association." Membership is limited to members of said Association for the first five years after their admission to practice law in California by examination. It was decided to keep the Committee a purely stag group, as the Women Lawyers Club already provides a place for young women lawyers to accomplish the same purposes. The plan of holding a meeting every three or four months, at dinner, was approved. Four officers, to constitute the executive committee, who are selected by vote in a meeting of the Junior Committee, subject to appointment as such officers by the then president of the Bar Association, were decided upon, the four being a chairman, two vice-chairmen, and a secretary. The ultimate appointment is left with the presiding officer of the Bar Association in order that the Junior Committee may always remain a subsidiary organization of the Association, with a structure like that of the other committees of the Association. No dues are to be charged for membership in the Junior Committee, payment of Bar Association dues entitling those in the "first-five-years" classification to participate in Junior Committee activities. The officers elected for the first term were the following:

Charles E. Beardsley, Chairman; Leo Falder and Thomas H. McGovern, Vice-Chairmen; Bruce Wallace, Secretary.

About 145 men attended this meeting.

The second meeting of the Junior Committee was held on Thursday evening, August 30, 1928, and was addressed by Judge Emmett H. Wilson on the subject "Preparing a Case for Trial." The Committee had as its guests on that occasion Superior Court Judges Edwin F. Hahn, Douglas L. Edmonds, William C. Doran, William T. Aggeler, Daniel Beecher, Chas. C. Montgomery, and Fletcher Bowron. There were not quite a hundred men in attendance at this meeting, the fact that vacations interfered probably explaining the falling off in numbers. It was decided that name-badges should be purchased and

worn by the members at future meetings to facilitate their getting acquainted.

The next meeting held was that of Thursday evening, January 31, 1929, at the Chamber of Commerce Dining Room. About 125 men were present, and the principal speaker was Herbert J. Goudge, Esq., who spoke on "The History of the Third Degree and Kindred Practices." District Attorney Buron Fitts also spoke briefly, and the following guests were present: Presiding Judge Arthur Keetch, Judge Marshall F. McComb, our youngest Superior Court Judge, Judge Guy R. Crump, next president of the Bar Association, Will H. Anderson, chairman of the Bar Association's Committee on Constitutional Rights, Hubert T. Morrow, and John Beardsley. In order that the term of the Junior Committee officers might be made to correspond to that of Bar Association officers, the regular annual election was held, and the following men were selected as officers for 1929-1930:

Edward S. Shattuck, Chairman, Leo Falder and Joseph Ball, Vice-Chairmen, Ward Sullivan, Secretary.

Briefly stated, the purposes of the Junior Committee are these: To stimulate and broaden the young lawyer's acquaintanceship among the members of the bar and the occupants of the bench; to form an available working unit which can be used to help carry out the plans of the Bar Association; to hold meetings at which addresses and discussions on subjects of special interest to men new in the profession may be heard and participated in; to promote among its members especially, and among members of the bar generally, high standards in practice, and respect for and understanding of the ethics of our profession; to do what it can for the welfare of young lawyers in Los Angeles County.

To these ends our activities have been directed in the first months of the existence of the Junior Committee; at each meeting, distinguished judges and lawyers have been our guests, and members of the Committee have been encouraged to meet them; talks have been given us on topics particularly interesting and important to young lawyers; the young lawyers have

offered and given their help to the Bar Association in soliciting new members, counting plebiscite returns, serving on the Judiciary Campaign Committee's Speakers Bureau; aiding the Constitutional Rights Committee in the mechanics of its important work; and sponsoring the establishment of an employment service in the office of the secretary of the Bar Association.

We hope that the future will bring us a larger percentage of participation in Junior Committee activities by the five or six hundred eligible Los Angeles lawyers, further responsibilities and opportunities for service in the Bar Association's varied activities, wider acquaintance with lawyers and judges, betterment of the lot of the young lawyer in this community, and some measure of accomplishment of our purposes in regard to professional ethics and conduct. Already many other cities have followed Los Angeles' lead in this young lawyer movement, and we trust that it is to be of widespread benefit.

Respectfully submitted,
Charles E. Beardsley, *Chairman*
Leo Falder, *Vice-Chairman*
Thos. H. McGovern, *Vice-Chairman*
Bruce Wallace, *Secretary*

Special announcements by law firms of new locations and new associations are most effectively made to the profession through the pages of the BULLETIN. *In addition, such announcements serve as a manifestation of good-will toward and co-operation with the* BULLETIN *in its program of constructive endeavor for the welfare of the Bar Association.*

DOMESTIC RELATIONS

(Continued from Page 266)

therefor. Simmons v. Simmons, 22 Cal. App. 448.

JURISDICTION, AS TO CUSTODY AND SUPPORT OF CHILDREN:

Held to be exclusive in original divorce action; also suggested that child probably could enforce liability for support in the event parent failed so to do. Lewis v. Lewis, 174 Cal. 336.

MODIFICATION OF ORDERS AND DECREES:

Orders and decrees when made render res adjudicata all matters included therein. To justify a modification thereof there must be a showing of change of circumstances arising after entry of decree or order sought to be modified, or at least a showing that facts were unknown and could not with due diligence have been ascertained. Olson v. Olson, 57 Cal. App. Dec. 1100.

Strictly speaking an order changing custody of a child or otherwise making a different order upon changed circumstances is not a modification of the prior order even though the effect of such new order may be to nullify the prior one. It really is a supplemental order. Bancroft v. Bancroft, 178 Cal. 352, 367.

The court has power to make new and different orders as to custody of children throughout their minority, but has no power to award alimony after judgment unless some order was made in the original decree. Harlan v. Harlan, 154 Cal. 341; Lewis v. Lewis, 174 Cal. 336.

FINAL DECREES:

Entry or enforcement of same may be enjoined in proper cases. Carp v. Superior Court, 76 Cal. App. 481.

Reconciliation of parties, but not mere adulterous conduct after interlocutory decree, may bar entry of final decree in discretion of court. Olson v. Superior Court, 175 Cal. 250.

Decree may be set aside upon motion for extrinsic fraud although more than six months have elapsed. This is contrary to general rules relative to vacation of decrees. Aldrich v. Aldrich, 75 Cal. Dec. 320; McGuiness v. Superior Court, 196 Cal. 222.

Property acquired by husband after interlocutory and before final decree may be community in character and distribution thereof may be sought by wife after final decree. London G. & A. Co. v. Ind. Acc. Comm., 181 Cal. 460 at 464.

DESERTION:

Intent to desert may be presumed from proof of fact of abandonment without apparent cause. Morrison v. Morrison, 20 Cal. 431; Benkert v. Benkert, 32 Cal. 467.

Offer of reconciliation after cause of action for desertion has accrued does not cure it. Howard v. Howard, 134 Cal. 346.

Declaration made within one year, though separation lasted over year, does not show that intent existed for statutory period. Wright v. Wright, 52 Cal. App. 548.

PLEADING:

Award of alimony in default case cannot be upheld where prayer of complaint was for divorce and merely general relief. Bennett v. Bennett, 50 Cal. App. 48.

Cruelty: Mere allegations that conduct or acts were cruel held insufficient; the pleading must specifically allege that such conduct or acts caused grievous bodily or mental suffering. Maloof v. Maloof, 175

General allegations as to habits, temper and conduct, with certain specific examples held sufficient to state a cause of action. Hanson v. Hanson, 54 Cal. App. Dec. 887; also held that evidence of specific acts not pleaded was admissible under general allegations.

SUPPLEMENTARY PROCEEDINGS:

Held proper in divorce cases where there was judgment for alimony and the remedy thereby provided held concurrent with contempt proceedings. Edwards v. Superior Court, 55 Cal. App. Dec. 197.

STATUS OF PARTIES AFTER JUDGMENT OF DIVORCE:

A decree makes the status res adjudicata and precludes later collateral attack such as by an action of annulment of marriage. Estate of Lee, 73 Cal. Dec. 154.

WILFUL NEGLECT:

Earnings of wife living with husband are community property and she is not entitled to divorce on this ground even though he lived in idleness. Hansen v. Hansen, 27 Cal. App. 401. The obligation of the husband to support the wife exists, however, although she supports herself, and if she is living separate and apart from him her earnings are separate property. Clark v. Clark, 75 Cal. Dec. 325.

Book Reviews

HARRY GRAHAM BALTER *of the Los Angeles Bar*
Assistant United States Attorney

LOSING LIBERTY JUDICIALLY: By Thomas James Norton; 1928; xxii and 252 pages; The MacMillan Company, New York City; Price $2.50.

The prohibition problem has been attacked in many ways — prohibition, some say, is a vicious enactment, it undermines respect for all law, corrupts morals, makes for venal officials, and is causing our nation to be a laughing stock among all other nations. Each face of this vital controversy has had its advocates and its opponents. But it remained for Thomas James Norton, a Chicago attorney and an obviously keen student of our Constitution to slash down upon the Eighteenth Amendment and the Volstead Act with the startling contention that these measures are void as a matter of law and policy. *Losing Liberty Judicially* bravely advances the argument that the United States Supreme Court should never have permitted the Amendment and its enabling act to become accepted law.

Mr. Norton's views are briefly these: The theory of our Constitution was that of three distinct branches of government, each equally important and each checking the other. Our country was founded on the principle that the national government was only to receive specific powers and that the States were to be the holders of control over personal rights of man and his general well-being. But the national Congress has, as James Madison put it, an "enterprising ambition" to extend its power. The chief function of the Supreme Court was to curb this over-zealousness. Nevertheless, slowly but surely, Congress has enlarged its powers over matters never intended to be under Federal control and the Supreme Court has not properly checked this dangerous procedure. Applying this to the liquor problem, Mr. Norton proceeds from the leading case of Mugler v. Kansas (123 U. S. 623), in which the Federal high court upheld the right of a legislature absolutely to forbid the sale of intoxicants, and, after showing the false premises upon which it was decided, traces the insidious steps by which the Supreme Court found itself in the position of saying in 1926 that a physician could issue only a definite number of prescriptions of liquor for medicinal purposes (Lambert v. Yellowly, 272 U. S. 581). Governmental interference with private liberty here reaches the high point, according to the author, where it not only absolutely prohibits any kind of liquor to a man whether he be sober or inebriate, but dictates to a skilled professional man what he shall prescribe for his patient and the manner in which he shall do so. Such rights do not inhere in the Federal government and it was never intended that they should by our founders, he states. Because the Supreme Court has failed to "pull up" Congress in its scramble for power, liberty has been judicially lost.

A telling point is made that the very enactment of the Eighteenth Amendment and the Volstead Act was not constitutional inasmuch as the former was proposed and the latter passed by two-thirds of a quorum of Congress whereas the Constitution requires "two-thirds of both houses."

In addition to this attack on the usurpation of power by the national government in the liquor question, Mr. Norton carries the matter into other spheres where liberty as conceived by the founders of the Constitution would prohibit governmental interference. The oleomargarine laws, the Oklahoma statute forcing solvent banks to make deposits for the benefit of "wildcat banks" (Noble State Bank v. Haskell, 219 U. S. 104), and the much discussed case of Michaelson v. U. S. (266 U. S. 422), in which the power of the Senate to punish contumaceous witnesses is upheld, are all analyzed and their contravention of constitutional privileges dwelt upon.

Here is a small book which is exceedingly thought-provoking. It presents a schematic array of cases and well-organized logical attack on the prohibition laws and kindred measures which deal with the personal affairs and rights of man. Whether or not one agrees with everything said in it, the power of its argument cannot be denied.

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